

REMARKS

Claims 1-66 are pending. Claims 28-66 have been withdrawn as being directed to a non-elected invention. Applicant reserves the right to pursue these claims in a later filed application claim priority to the subject application. Applicant has reviewed the Office Action mailed March 14, 2006, and respectfully traverses all grounds of rejection for the reasons that follow.

Rejections Under 35 U.S.C. § 102

Claims 1, 4-6 and 8-11 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Gorsek, U.S. Patent No. 6,103,756. The Office alleges that Gorsek describes a formulation containing vitamins C, E, and A; selenium, and four high potency antioxidants corresponding to alpha lipoic acid, quercetin, rutin and citrus bioflavonoids.

When lack of novelty is based on a printed publication that is asserted to describe the same invention, a finding of anticipation requires that the publication describe all of the elements of the claims. *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1349, 48 U.S.P.Q.2d 1225, (Fed. Cir. 1998) (quoting *Shearing v. Iolab Corp.*, 975 F.2d 1541, 1544-45, 24 U.S.P.Q.2d 1133, 1136 (Fed. Cir. 1992)). To establish a *prima facie* case of anticipation, the Examiner must show that the single reference cited as anticipatory art describes all the elements of the claimed invention.

The invention claims a nutrient composition for augmenting immune strength or physiological detoxification. The nutrient composition includes an optimal combination of an effective amount of at least one vitamin antioxidant, at least one mineral antioxidant and a highly saturable amount of at least three high potency antioxidants. The claimed invention is distinct from Gorsek because Gorsek does not describe a nutrient composition containing four high potency antioxidants.

The Office cites to column 1, lines 56-65 and claim 3 of Gorsek, alleging alpha lipoic acid, quercetin, rutin and citrus bioflavonoids to correspond to four high potency antioxidants. However, application excludes at least three of the alleged high potency antioxidants pointed to in Gorsek in its definition of this term found at, for example, paragraph [025]. Therefore, Gorsek

fails to describe a composition containing at least three high potency antioxidants as claimed by the invention. Withdrawal of this ground of rejection is respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1-27 stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over Kosbab, U.S. Patent Application 2001/0031744. The Office alleges that Kosbab describes an exemplary formulation dosage containing at least one vitamin antioxidant, at least one mineral antioxidant and at least three high potency antioxidants and alleges that weight ranges for exemplary formula components encompass those disclosed in the application. The Office concedes that Kosbab does not expressly disclose a nutrient composition having highly saturable amounts of at least three high potency antioxidant, but concludes that one skilled in the art would have been motivated to modify the composition of Kosbab to arrive at the claimed invention allegedly because Kosbab provides the preferred dosage ranges of formula components such that one skilled in the art could reduce to practice the instant invention by adding highly saturable amounts of at least 3 high potency antioxidants.

To establish a *prima facie* case of obviousness, the Office must show that the prior art would have suggested the claimed invention to one of ordinary skill in the art and that it could have been carried out with a reasonable likelihood of success when viewed in the light of the prior art. *Brown & Williamson Tobacco v. Philip Morris*, 229 F.3d 1120, 1124 (Fed. Cir. 2000), accord *In re Royka*, 180 USPQ 580 (C.C.P.A. 1974) (to establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art); M.P.E.P. §2143.03.

The invention claims a nutrient composition for augmenting immune strength or physiological detoxification. The nutrient composition includes an optimal combination of an effective amount of at least one vitamin antioxidant, at least one mineral antioxidant and a highly saturable amount of at least three high potency antioxidants. The claimed invention is unobvious over Kasbab because Kasbab fails to suggest a formulation containing highly saturable amounts of at least three high potency antioxidants.

Other than the Office's assertion that: "Kosbab provides the preferred dosage ranges of formula components such that one of ordinary skilled in the art could reduce to practice the instant invention by . . . adding highly saturable amounts of at least 3 high potency antioxidants" this conclusionary statement fails to show or articulate why one of ordinary skill would be motivated to include (1) at least three high potency antioxidants and (2) include them in highly saturable amounts. Absent such a teaching suggestion or motivation to arrive at the claimed combination of three high potency antioxidants all in highly saturable amounts, the Office has not met its burden.

Claims 1-27 also stand rejected under 35 U.S.C. § 103(a) as allegedly obvious over Gorsek in view of Ames et al., U.S. Patent No. 5,916,912, and Kosbab. Gorsek and Kosbab are cited as described above. Ames et al. is cited allegedly for describing a formula having at least one antioxidant and acetyl L-carnitine and the beneficial effect of administering a combination of antioxidants for restoring mitochondrial function in older animals. The Office alleges that it would have been obvious to modify the composition of Gorsek with a highly saturable amount of acetyl L-carnitine as suggested by Ames et al. and Kosbab for the purpose of reversing the indicia of aging. Motivation for the combination is alleged to derive from the restoration of youth being a desirable health benefit and marketing feature.

As described previously, Gorsek and Kosbab fail to teach or suggest all elements of the claimed invention. Ames et al. fails to cure these deficiencies. The mere identification of elements across cited references is insufficient to defeat patentability of the combined subject matter as a whole. As with Gorsek and Kosbab alone, the combination of these references with Ames et al. similarly fail to provide the required teaching, suggestion or motivation to combine at least three high potency antioxidants in highly saturable amounts. Absent this teaching, suggestion or motivation, the invention cannot be obvious and withdrawal of this ground of rejection is respectfully requested.

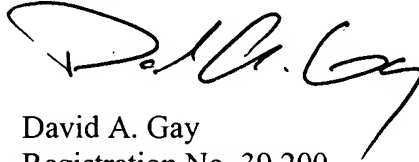
CONCLUSION

In light of the Amendments and Remarks herein, Applicants submit that the claims are in condition for allowance and respectfully request a notice to this effect. Should the Examiner have any questions, he is invited to call the undersigned attorney.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

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